

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>GARLAND E. COOK</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 170,559
<b>E. W. JOHNSON, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>BUILDERS ASSN. SELF INSURANCE FUND</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**NUNC PRO TUNC**

The Order of the Workers Compensation Appeals Board of June 29, 1994, in the above matter is modified as follows:

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated January 21, 1994, is hereby modified and an award is entered as follows:

Claimant is awarded compensation against respondent E. W. Johnson, Inc. and its insurance carrier, Builders Association Self Insurance Fund, for an accidental injury sustained on January 5, 1990. Claimant is entitled to 60.43 weeks temporary total disability at the rate of \$266.68 per week in the sum of \$16,115.47, followed by 111.57 weeks permanent partial general bodily work disability at the rate of \$26.67 per week in the sum of \$2,975.57, followed thereby by 243 weeks permanent partial general bodily work

disability at the rate of \$89.34 per week in the sum of \$21,709.62 for a total award of \$40,800.66.

As of June 17, 1994, there is due and owing to claimant 60.43 weeks of temporary total disability compensation at the rate of \$266.68 per week in the sum of \$16,115.47 plus 111.57 weeks permanent partial general bodily work disability at the rate of \$26.67 per week in the sum of \$2,975.57, followed thereafter by 60.14 weeks permanent partial general bodily work disability at the rate of \$89.34 per week in the sum of \$5,372.91 for a total of \$24,463.95 which is due in one lump sum minus any amounts previously paid. Claimant is thereafter entitled to 182.86 weeks permanent partial general bodily work disability at the rate of \$89.34 per week in the sum of \$16,336.71 until fully paid or until further order of the Director.

In all other respects the Appeals Board's Order of June 29, 1994, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Mark E. McFarland, PO Box 497, Garden City, KS 67846  
Wade A. Dorothy, PO Box 14548, Lenexa, KS 66285  
Richard L. Friedeman, PO Box 1110, Great Bend, KS 67530  
William F. Morrissey, Special Administrative Law Judge  
George Gomez, Director

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VS.

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AND

**BUILDERS ASSN. SELF INSURANCE FUND**  
Insurance Carrier

AND

## KANSAS WORKERS COMPENSATION FUND

## ORDER

On the 11th day of July, 1994, the Petition for Reconsideration by the Kansas Workers Compensation Appeals Board of an Award entered by the Workers Compensation Appeals Board on June 29, 1994, came on for consideration.

The claimant, Garland E. Cook, by and through his attorney, Mark E. McFarland, requested the Appeals Board reconsider and modify its earlier Order.

The Appeals Board finds there is no statutory procedure whereby an award which has been formally made and entered in a workers compensation case may be modified by the Appeals Board, such judgement being subject to modification only under K.S.A. 44-556 upon appellate review.

While this specific issue has not been raised with regard to the Appeals Board, this matter was considered by the Kansas Supreme Court in Norcross v. Pickrell Drilling Co., 202 Kan. 524, 449 P.2d 569, (1969), with regard to appeals from District Court decisions in workers compensation matters. In Norcross the District Court, in considering a motion by the respondent to postpone entry of judgement, issued a second judgement and order dated subsequent to the original District Court order. The Supreme Court held the original order, upon becoming final, could not thereafter be modified by the District Court except in a situation where a correction of the record through Nunc Pro Tunc would be required.

The appeal of workers compensation matters to the Appeals Board is de novo and follows similar procedures as was followed in the appeals to District Court from the Director's orders. The lack of statutory authority for reconsideration procedure before the Appeals Board is similar to the lack of statutory authority for reconsideration before the District Court. The rules set out in Norcross appear applicable in this situation.

The Appeals Board finds that claimant's Petition for Reconsideration is denied as no statutory authority for such procedure has been created by the Legislature.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the Petition for Reconsideration filed by the claimant shall be and hereby is denied, and the Appeals Board's Order of June 29, 1994 remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1994.

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BOARD MEMBER

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